



August 23, 2021

VIA SERFF

The Honorable Trinidad Navarro
Insurance Commissioner
Department of Insurance
State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

Attention: Tanisha Merced, Deputy Insurance Commissioner

**RE: DCRB Filing No. 2106 – Proposed Effective December 1, 2021
Proposed Classification Procedural Revision – Classification Applicable to Medical Marijuana
Dispensaries (Compassion Centers)**

Dear Commissioner Navarro and Deputy Commissioner Merced:

On behalf of the members of the Delaware Compensation Rating Bureau, Inc. (DCRB), is a proposed filing for revisions to the DCRB Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and Employers Liability Insurance (Basic Manual). These revisions are proposed for policies with effective dates of 12:01 a.m., December 1, 2021 or later. This proposed effective date is intended to make implementation of these changes concurrent with DCRB's normal annual comprehensive residual market rate and voluntary market loss cost filing, recently filed with the Department of Insurance. This coordination consolidates necessary changes that our members and other constituents must make to policies, forms, and systems so that they occur once annually. Nothing in the proposed Basic Manual language housekeeping revisions will impact any classification's residual market rate or voluntary market loss cost value.

DCRB proposes that Delaware medical marijuana dispensaries be reclassified from Code 928, Retail Store, N.O.C., to Code 927, Pharmacy, for policies with effective dates on or after December 1, 2021. DCRB staff concludes that the operational characteristics of medical marijuana dispensaries are reasonably analogous to retail pharmacies. Code 927 contemplates all employees and therefore does not permit a division of payroll with either standard exception classification i.e., Code 953, Office, or Code 951, Salesperson – Outside. DCRB notes that the proposed classification approach will bring Delaware in line with the national perspective on classification procedure for these businesses, as well as the classification procedure now applied by the Pennsylvania Compensation Rating Bureau (PCRB).

Details of this filing are provided in DCRB's June 9, 2021 memorandum, which is included as part of this filing. The memorandum was presented to the DCRB Classification and Rating Committee at the Committee's June 9, 2021. The DCRB received no Committee comment in response to DCRB's presentation, which is interpreted as the Committee having no objection to the DCRB's medical marijuana dispensary reclassification proposal.

As of this filing, the DCRB has identified two employers on the DCRB's database engaged in the operation of medical marijuana dispensaries/compassion centers. One of those employers has not had current workers' compensation insurance coverage since August 13, 2020. The second employer has current coverage. The approved December 1, 2020 loss costs for Codes 927, 928, 951 and 953 are \$1.00, \$2.39, \$0.42 and \$0.12, respectively.

If the DCRB's compassion center reclassification proposal is approved, the reclassification of the employer that does not have current coverage from Code 928 to Code 927 will result in a premium decrease on the basis of the payroll estimates shown on that employer's most recent workers' compensation policy, despite the concurrent withdrawal of Codes 951 and 953.

The employer with current coverage reports estimated payroll to Codes 927, 0011 and 953 on their current workers' compensation insurance policy. Under current DCRB classification procedure, that employer's compassion center is misclassified to Code 927. Further, the use of Code 953 with Code 927 is prohibited. If the DCRB's proposal is approved, the use of Code 927 for the insured's compassion center would be sustained but authorization of Code 953 will be withdrawn, resulting in a premium increase. Otherwise, the employer's misclassification to Code 927 will be corrected prospectively to substitute Code 928 in place of Code 927, resulting in a premium increase greater than if Code 927 is sustained and Code 953 is withdrawn.

Thank you in advance for your review and attention to this filing. The DCRB will be pleased to answer any questions you or the Insurance Department staff may have regarding these proposals.

Sincerely,

William V. Taylor
President

Enclosure: Revisions to Section 2



TO: Delaware Compensation Rating Bureau Inc. (DCRB)
Classification and Rating Committee

FROM: Robert Ferrante – Senior Classification Analyst, Technical Services
DCRB Classification Department

DATE: June 01, 2021

RE: Classification Review – Classification Applicable to Compassion Centers
(Medical Marijuana)

BACKGROUND

Governor Jack Markell signed Senate Bill 17 into law on May 13, 2011, establishing the Delaware Medical Marijuana Act (DMMA) (Title 16, Chapter 49A of the Delaware Code). The Office of Medical Marijuana (OMM), housed in the Delaware Division of Public Health, is responsible for monitoring and enforcing the DMMA. Adults aged 18 or older or pediatric patients with parental consent may participate in the program. Patients must visit a Delaware licensed physician that is either an MD (medical doctor) or DO (Doctor of Osteopathic Medicine). State regulations require that the doctor must have a “bona fide relationship with the patient” for medical marijuana certification purposes. Upon physician certification that the patient has a qualifying medical condition, the patient may apply for and be issued a medical marijuana identification card from the OMM. The patient may then purchase medical marijuana from an approved dispensing facility, referred to as a compassion center. Patients are authorized to purchase three ounces of medical marijuana every 14 days, for a total of six ounces per month. The identification card is valid for one year from issuance, and must be renewed annually if the patient wishes to continue purchasing medical marijuana. Delaware’s first compassion center opened on June 26, 2015.

The Bureau’s classification staff began receiving telephone calls questioning the classification assignment of medical marijuana dispensaries and growing facilities as early as January of 2017. Since this is a nascent industry, there was no statistical data for the DCRB to analyze or evaluate that would aid in the initial or ultimate determination of the applicable classification. Internal discussions and review – which included both an analysis of information available online regarding the DMMA and a staff field survey of Delaware’s first compassion center – lead staff to recommend to constituents that Code 928, Retail Store, N.O.C., be applied to payroll developed in the operation of a compassion center, and Code 0011, Flower Raising, be applied to payroll developed in the operation of medical marijuana growing facilities. The recommendation at that time for use of Code 928 for dispensaries was based partially on staff’s online research and information developed in the course of the above referenced field survey, and secondly because Code 928 is designated “N.O.C.” or “Not Otherwise Classified” and thus has a broader scope contemplating a variety of mercantile and related operations where the typical customer is the general public. Staff began advising constituents that these classification recommendations would likely be subject to further review as additional information and data regarding these businesses emerged.

Staff's initial evaluation did involve consideration of whether Code 927, Pharmacy, could be applied to medical marijuana dispensaries. At that time, it was reasoned that because compassion centers were not licensed in the same manner as 'traditional' pharmacies and also did not sell any other type of drug or medication, that Code 927 was not sufficiently analogous or appropriate. Staff also observed that Code 927 is a highly focused classification, applying only to pharmacies. By contrast, as noted above Code 928 is applied to retail mercantile businesses that are not otherwise classified. Staff was unaware of any instances where the DCRB classified a non-pharmacy employer to Code 927 by analogy.

Code 0011 was selected for the growing of marijuana because cannabis is a genus of flowering plant.

Staff noted that the Workers' Compensation Insurance Rating Board of California (WCIRB) classifies medical marijuana dispensaries to WCIRB Code 8017 (1), Stores – Retail, which is equivalent to DCRB Code 928 except that WCIRB Code 8017 (1) also includes operations classified in Delaware to DCRB Code 927. Staff also noted that the WCIRB classifies medical marijuana raising to WCIRB Code 0035, Florists, California's equivalent to DCRB Code 0011. As a result of staff's initial review and discussions, the DCRB proposed the creation of Underwriting Guide entries for "Medical Marijuana Dispensaries" (Code 928) and "Medical Marijuana Growing" (Code 0011) as part of the DCRB's December 1, 2018 Housekeeping Revisions Filing, which was approved by the Delaware Insurance Commissioner.

REQUEST FOR REVIEW

The Pennsylvania Workers' Compensation Rating Bureau (PCRB) proposed the creation of the same Underwriting Guide entries as Delaware for this industry as part of the PCRB's April 1, 2019 Housekeeping Revisions Filing, which was approved by the Pennsylvania Insurance Commissioner. As staff continued to analyze the classification procedure for this industry, the PCRB received correspondence from the Pennsylvania Department of Labor and Industry (L & I) (dated February 3, 2020) concerning the classification of Pennsylvania medical marijuana dispensaries. The L & I correspondence was prompted by an inquiry submitted to L & I by a Pennsylvania medical marijuana dispensary operator who "...stated that the WC classification code for his dispensary was unilaterally changed from pharmacy to retail..." The PCRB interpreted this as meaning the employer's medical marijuana dispensary was reclassified from Code 927 to Code 928. The L & I correspondence further states that "...It was also verified that the employer experienced a 60% increase in WC costs because of this classification change, with no accidents/claims." Staff has clarified that an employer's classification assignment is based upon an employer's field of business. An employer's claims experience, whether favorable or unfavorable, has no bearing on how the employer is to be classified.

L & I's February 3, 2020 correspondence did not name the employer in question. Staff has identified medical marijuana dispensaries on the PCRB's database, and is aware of a medical marijuana dispensary that was reviewed by the classification staff where the employer requested that their dispensary be reclassified from Code 928 to Code 927. Staff disapproved that request on the basis of existing classification procedure.

A summary of relevant points raised by L & I in their February 3, 2020 correspondence in support of the assignment of Code 927 to Pennsylvania medical marijuana dispensaries follows:

- Potential dispensary operators are subject to a “...very rigid application process...” in order to obtain a dispensary permit from the Pennsylvania Department of Health (DOH).
- Dispensary stakeholders (e.g., principals, operators, financial backers and employees) are subject to a verification process, including a criminal history.
- Dispensaries must limit the amount of product sold to an individual patient to a 30 day supply of individual doses.
- Dispensaries may only sell product to individuals that have obtained a medical marijuana identification card per the process described above.
- A dispensary by statute must maintain a directory of patients approved to use medical marijuana in a database.
- Dispensaries are required to have a pharmacist or other medical professional (e.g., a physician) on premises during operating hours.
- Dispensaries may not be located within 1,000 feet of the property line of a public, private or parochial school or a day care center.

Staff subsequently participated in a conference call with representatives from L & I, the DOH and other constituents on March 10, 2020. L & I convened this conference call in an effort to obtain a better understanding of the reasoning behind PCRB’s initial recommendation of Code 928 for medical marijuana dispensaries, and to also answer any remaining questions that PCRB staff may have regarding the operational characteristics of these businesses. A DOH representative provided a detailed overview of Pennsylvania’s medical marijuana program, specifically regarding the dispensary operations. In response to PCRB staff’s questions, the DOH representative advised that the DOH considers medical marijuana dispensaries to be dispensing pharmacies. It was explained that all product sold through a medical marijuana dispensary is received by the dispensary in its final form and packaging. It was indicated that a dispensing pharmacy sells medications but does not perform compounding (i.e., the creation of a pharmaceutical preparation by a licensed pharmacist to meet the unique needs of an individual patient). A compounding pharmacy performs compounding on site. The use of the term “pharmacy” was a key aspect in this discussion. Bureau classification procedure does not distinguish between dispensing and compounding pharmacies.

The DOH representative also expanded upon the role of the dispensary’s on-site pharmacist (or other medical professional) at staff’s request. The pharmacist will perform an extensive patient evaluation review for all first time customers. This includes but is not necessarily limited to: asking the patient about their symptoms, what medications they are currently taking, and what manner of relief they are seeking. The pharmacist may then make recommendations to the patient on which product to buy and advise them on how that product may interact with medications they are already taking. The pharmacist has access to the patient’s medical records during this process.

With the benefit of the additional details and clarification provided by the DOH, staff reconsidered the classification assignment of Pennsylvania medical marijuana dispensaries. Staff recognized that some of the operational characteristics of these businesses are not typical to employers classified to Code 928. The explanation of the on-site pharmacist (or other medical professional) was key to staff’s reevaluation. DOH’s view of these businesses as dispensing pharmacies was

also compelling. Accordingly, staff concluded that Pennsylvania dispensaries are reasonably analogous to “traditional” pharmacies and therefore should be appropriately classified to Code 927. Staff proposed that medical marijuana dispensaries be reclassified from Code 928 to Code 927 for policies with effective dates on or after April 1, 2020. The Pennsylvania Insurance Commissioner approved staff’s Pennsylvania medical marijuana dispensary proposal.

Staff endeavors to align the DCRB and PCRB uniform classification plans when feasible and as such revisited the classification assignment of Delaware compassion centers. Staff notes that there are operational similarities between Delaware compassion centers and Pennsylvania dispensaries. As noted above, Delaware compassion centers are also limited in the amount of product that may be sold to an individual patient in a given month, may sell only to individuals who have been issued a medical marijuana identification card, and may not be located within a specified distance from a public, private or parochial school.

Staff also identified one difference between Delaware compassion centers and Pennsylvania dispensaries. Unlike Pennsylvania dispensaries, Delaware compassion centers are not required by statute to have a pharmacist or other medical professional on staff during operating hours. Compassion centers do employ patient orientation specialists and patient advisors. Patient orientation specialists will greet and register new patients, confirm their status in the program, and provide overview and orientation materials. Patient advisors will consult with patients, recommend different types of product depending on the patient’s ailment, and handle sales transactions. Patient orientation specialists and patient advisors are subject to job specific training, but do not need to have a medical background. While this difference is notable, staff concludes that overall Delaware compassion centers are sufficiently similar to Pennsylvania medical marijuana dispensaries to warrant a similar classification approach and recommends that Delaware compassion centers be reclassified from Code 928 to Code 927. This will also align Delaware classification procedure with the national perspective for this industry. The report notes that Code 927 includes all employees and as such does not permit a division of payroll with either standard exception classification, i.e., Code 953, Office, and Code 951, Salesperson – Outside.

Presently there are six compassion centers operating in Delaware. One employer operates two of the centers, a second employer operates three of the centers, and the last employer operates one center. Only two of those employers are on the DCRB’s database. One of those employers has not had current workers’ compensation insurance coverage since August 13, 2020. The second employer has current coverage. The approved December 1, 2020 loss costs for Codes 927, 928, 951 and 953 are \$1.00, \$2.39, \$0.42 and \$0.12, respectively. If the DCRB’s compassion center reclassification proposal is approved, the reclassification of the employer that does not have current coverage from Code 928 to Code 927 will result in a premium decrease on the basis of the payroll estimates shown on that employer’s most recent workers’ compensation policy, despite the concurrent withdrawal of Codes 951 and 953.

The employer with current coverage reports estimated payroll to Codes 927, 0011 and 953 on their current workers’ compensation insurance policy. Under current DCRB classification procedure, that employer’s compassion center is misclassified to Code 927. Further, the use of Code 953 with Code 927 is prohibited. If the DCRB’s proposal is approved, the use of Code 927 for the insured’s compassion center would be sustained but authorization of Code 953 will be withdrawn, resulting in a premium increase. Otherwise, the employer’s misclassification to Code 927 will be corrected prospectively to substitute Code 928 in place of Code 927, resulting in a premium increase greater than if Code 927 is sustained and Code 953 is withdrawn.

DCRB Classification & Rating Committee

RE: Classification Review – Classification Applicable to Compassion Centers (Medical Marijuana)

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The enabling Basic Manual language amendments are attached for the Committee's review.

The DCRB does not propose any revision to the current procedure of classifying medical marijuana growing facilities to Code 0011.

c: William V. Taylor
Bonnie Piacentino
Delisa Fairley
Joe Lombo
Christina Yost

**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND
RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY
INSURANCE**

Proposed Effective December 1, 2021

SECTION 2

RATING VALUES through **DEFINITIONS** remain unchanged.

DEFINITIONS

CLASSIFICATIONS

No change to Classification Code 005 – **TREE PRUNING, SPRAYING, REPAIRING OR FUMIGATING** through
Classification Code 926 – **HARDWARE STORE – WHOLESALE**

927 PHARMACY – ALL EMPLOYEES INCLUDING OFFICE

UNDERWRITING GUIDE

[Compassion Center \(Medical Marijuana\)](#)

[Medical Marijuana Dispensary](#)

928 RETAIL STORE, N.O.C.

UNDERWRITING GUIDE

~~[Medical Marijuana Dispensary](#)~~

No change to Classification Code 932 – **COPYING OR DUPLICATING SERVICE – ALL EMPLOYEES INCLUDING
OFFICE** through Classification Code 9741 – **CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM)**

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